



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of John Shaw, Fire
Lieutenant (PM1067V), Township of
Belleville

List Removal Appeal

CSC Docket No. 2021-1294

ISSUED: JUNE 7, 2021 (SLD)

John Shaw appeals the Township of Belleville’s (Belleville) request to remove his name from the eligible list for Fire Lieutenant (PM1067V), on the basis that he failed to respond to the certification notice.

The appellant, a veteran, took and passed the promotional examination for Fire Lieutenant (PM1067V), which had a closing date of August 21, 2017. The resulting eligible list promulgated on January 17, 2019 and expires on January 16, 2022. The appellant’s name was certified to the appointing authority on January 7, 2021 (PL210018) as the third listed veteran eligible. In disposing of the certification, the appointing authority appointed the first two listed eligibles and requested the removal of the appellant’s name on the basis that he failed to respond to the certification notice.

On appeal, the appellant maintains that he promptly responded to the certification notice that he received in January 2021. The appellant notes that the appointing authority never indicated that he was being considered for appointment. Moreover, the appellant maintains that it was common knowledge that the two individuals above him on the list were to be appointed. Finally, he notes that he was recalled to active duty on February 26, 2021, for Covid-19 response. In support of his appeal to the Civil Service Commission (Commission), the appellant submits a sworn, notarized statement indicating that foregoing. In addition, he indicates that on February 24, 2021, he received a letter from the Chief while on duty that he was prohibited from serving as an “acting” lieutenant while his file was being reviewed due to a promotional certification. He maintains that on February 25, 2021, he received a phone call from the Deputy Chief asking if he had received anything

recently in the mail from the Commission or the appointing authority. He asserts that as he was preparing to leave on active duty, he understood the question to refer to the letter he received at work the day before, so he replied that he had not corresponded with the Commission or the appointing authority.

The appointing authority, argues that the appellant's name was properly removed from the certification and that he should not be restored to the subject eligible list. In this regard, it argues that the appellant's submissions are inconsistent. Specifically, it argues that the phone call made to the appellant on February 25, 2021, was recorded and that during the phone call the appellant specifically stated that he did not receive the notice of certification.¹ Furthermore, the appointing authority argues that although the appellant specifically stated that he did not receive the certification, on appeal he claims that he did receive the notice and responded. The appointing authority asserts that due to the clear inconsistencies in the appellant's statements, it "stand[s] firm" in its decision, and that its "stance will remain in place until we receive a final decision."

CONCLUSION

N.J.A.C. 4A:4-4.7(a)6 provides that an eligible's name may be removed from a list for "non-compliance with the instructions listed on the notice of certification." *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his name from an eligible list was in error. Moreover, there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed. An appellant may rebut that presumption in submitting a sworn, notarized statement. See *SSI Medical Services, Inc. v. State Department of Human Services*, 146 *N.J.* 614 (1996); *Szczesny v. Vasquez*, 71 *N.J. Super.* 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun*, Docket No. A-1132-00T5F (App. Div. May 21, 2001).

In the instant matter, the appointing authority requested the removal of the appellant's name from the subject eligible list on the basis of his failure to respond to the January 7, 2021 certification. However, the appellant has submitted a sworn, notarized statement, attesting to the fact that he did receive the certification notice and that he responded. As such, the appellant has supported his burden of proof in this matter and it is appropriate that his name be restored to the subject eligible list.

Moreover, although the appointing authority argues that the appellant's statement to it on February 25, 2021 that he did not receive the certification over the phone and his sworn statement are inconsistent, it provides no evidence or a sworn statement in support. Furthermore, the appellant explains that he believed the

¹ Although the appointing authority states that the recording can be provided, it does not provide a sworn statement.

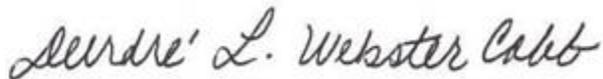
Deputy Chief was inquiring if he had received the letter he received in the office also via regular mail. Consequently, since the appellant has submitted a sworn, notarized statement that he timely responded to the certification, it is appropriate to restore his name to the subject eligible list for future employment opportunities.²

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the Fire Lieutenant (PM1067V) eligible list for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF JUNE, 2021



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² The Commission notes that if, indeed, the appellant had not received the notice, and subsequently had not responded, his appeal of that disposition may have also been granted so long as he provided a sworn, notarized affidavit attesting to that non-receipt.